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1-16-2015

### Statement by Margaret Semple collected by Rachel George on January 16, 2015

Margaret Semple

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### **General Information**

**Private or Public Statement?** - Private

**Statement Provider:** Margaret Semple

**Date:** January 16, 2015

**Location:** Telephone interview

**Previous Statement?** No

**Statement Gatherer:** Rachel George

**Support Person:** N/A

**Additional Individuals Present:** N/A

**Recording Format:** Audio

**Length of Recording:** 1:12:14

### **Recording**

**RG:** Ok, it is January 16th, 2015. This is a telephone interview. My name is Rachel George and today I'm speaking with-

**MS:** Margaret Semple. S-E-M-P-L-E.

**RG:** Perfect. And the file number is ME-201412-00075. Margaret have you been informed, understood and signed the consent form?

**MS:** I have.

**RG:** Excellent. And I have to let you know that if at any point during our conversation today, you indicate that there is a child or an elder currently in need of protection, or that there is imminent risk of serious bodily harm or death to an identifiable person or group, including yourself, that that information may not be protected as confidential. Do you understand?

**MS:** Fully understood.

**RG:** Alright. So you can start wherever you feel most comfortable.

**MS:** Ok. So I first became involved in the world of child welfare and child protection in 1980... late '84 or '85. I was working as a relatively new attorney in York county, Maine primarily. Down in, which is Biddeford, Saco, the southern Maine area. And it became pretty apparent— what happened to me fairly quickly, both by court appointment and more importantly by interest, but I began to take on a fairly significant caseload of child welfare cases. And at the time, my role was either to serve as the court appointed guardian ad litem for the child involved in the action, or to represent one of the parents. Occasionally both parents, but it was not unusual in those days for the interests of the mother and the father in a child welfare case to diverge. Um, so, oftentimes somebody would represent either the mom, or the dad, or the child.

So, at the time, child welfare culture and practice was very, very heavily... oriented I would say, towards removal of the child as the greater, most protective course of action, as opposed to leaving in the child in the home if there was some level of risk. Over time, that orientation has shifted to a more significant emphasis on kinship care, relative placement and family preservation. But I'd have to say in those days, my impression was that the first response of child welfare was petition to remove the child. These were usually immediate removals. I think in the time I worked between 1984 and 1987 or 8, I think I... I would be surprised if I did more than 3 cases that didn't involve an immediate removal of the child from the, from parental custody.

So, I was certainly, as a young attorney, I was aware of the Indian Child Welfare Act. And the case workers were aware of the Indian Child Welfare Act. But I think there was a, um... I think the fact that we were working in Southern Maine and most of the tribal children in Maine were believed to be living in the northern part of the state, where the Passamaquoddies and the Penobscots were, the Maliseets, the Wabanaki peoples... I don't know that either caseworkers or attorneys or judges necessarily thought to inquire deeply into whether or not the child might be a child subject to the protections of ICWA.

You know, so I honestly can't say, with the possible exception of just a couple of cases where the question of ICWA.... it didn't come up very often. And I can't tell you now if that was because of the department's practice wasn't um, wasn't... focused on inquiring? Because it really wasn't believed the cases would come up that much. Or if the department caseworker training emphasized the inquiry that strongly. But I think that was, there was... I think kind of a belief that this was maybe an issue more applicable to the northern part of the state.

*[00:05:27.25]* Um, there was another factor at work back in those days that I think played a part in this. And that was the response in the southern part of the state, the response to fathers in the southern part of the state. I do know that we would often talk to— one of the things that the attorneys didn't want to have happen was for a mother not to be able to identify or name a father early in the case, and have that question just be let go. In other words, not ask the mother more specific questions about who a father might be, and then follow up those possibilities with talking to the potential father. So it was looser, frankly. The downside to that was the occasional case where not having explored paternity deeply at the beginning of the case resulted in a surprise dad showing up much, much deeper into the case— sometimes even as late as the termination of parental rights hearing.



So I don't know there was a lot of inquiry.... while there may have been inquiry by caseworkers of mothers regarding whether or not there was Native American ancestry or if the child could be an ICWA child, that inquiry would have been focused more on the mother and possibly in cases— more on the mother, rather— and less on the father. So, I think its possible there were situations that were simply missed because, you know, because paternity, you know, was not fully or deeply explored. You know, I do know of cases where fathers, even named fathers weren't even interviewed at the time by the department. Maybe because they were believed to be the abuser and the department wasn't... I don't know the reasons for this. I do remember as a young attorney being quite perplexed by this phenomenon, which I think changed over time.

But I think that was the two, you know, the two overarching factors in application of the Indian Child Welfare Act— would be a belief that it's probably more of a northern part of the state issue, and two, a lack of exploration on the paternal side.

**RG:** Can I ask... you mentioned that the mentality of child welfare was to remove the child if there was a risk to safety, rather than keep the child in the home and kind of develop a safety plan. I'm wondering if in the 80's or in the late 70's, were there any instances that kind of solidified that push to child safety within the department. Like for example, a case where there was a death of a child in the home, or something like that— something that would have really stuck with caseworkers at the time to really be focused on removing the child if there could be a risk.

**[00:09:11.21]**

**MS:** Well there certainly were cases involving child death that would have informed the sensibilities of caseworkers really to remove... you know, that removal is the safest course of action. I don't believe— and, the result was of course very, very high caseloads. I mean, for a good part of the time I did child welfare work, up until the Adoption and Safe Families Act, Maine had, you know, 3,000 kids in care at any given time, which is a lot of kids, especially given the number of caseworkers responsible for those children. I mean you can't ask.... case loads were high at the time. And so I think there was less time available for protective caseworkers to be doing family preservation work up front.

So, to some extent I think that just.... it was kind of like, we're going to do the safest thing first. And the safest thing is get the child into a place of safety, which was, you know, believed to be in foster care. So, you know... the Adoption and Safe Families Act— the passage of that in, what is it, 1998 or thereabouts, um was a real sea change in the department and a huge shift to move towards kinship care and family preservation.

You know, I do know there was a belief not among all, but among some caseworkers back in the '80s, that kinship care was risky business, because.... it was kind of an apple doesn't fall far

from the tree mindset... where if a neglectful.... that there would be a reluctance to place a neglectful, an arguably neglectful parent with the child's grandparents. Kind of on the theory of well, this mom clearly didn't get good parenting. And so it would be equally risky to place with grandmother. And there were also multigenerational factors, where indeed, you know kids would, you know families would generationally have kids in foster care for one reason or another.

But I do remember that being very, very much alive. That the best and safest course of action is removal, so that's where we're gonna go.

**RG:** That's great, thank you so much.

**MS:** So, I did, I did the work of representing parents and representing children from '84/ '85 through 1987. And in 1987 I was invited to join the attorney general's office and represent the department. And so my first— and I did that through 1992 or 3. I was located in Salem. My case load was focused in the Augusta office and the Waterville office. And I guess I'd have to say that... the consciousness of the Indian Child Welfare requirements in those areas was a little bit better than it was in southern Maine at the time. But again, the... the focus on, or the reluctance to engage in kinship care and resources by the department being deployed just to kind of... it was crisis management— meaning there wasn't a lot of time to do family preservation work. Which of course is time consuming and difficult.

You know, I do remember becoming aware at that time of the work that was coming out of New Zealand that began- that was focusing on family preservation. And it, part of it had to do with the work that New Zealand was doing with, with their own aboriginal tribal groups, to try and keep those groups together. And some of the work that came out of New Zealand, people were starting to look at here. Not just in connection with Native American families, but in connection with all families.

But, you know, I certainly believe that in those cases... and I'd have to say I think that they were rare, in my ex-- I didn't have a lot of cases where the Indian Child Welfare Act standards applied, where the child was clearly protected. And everyone was, in those cases— people were aware of the higher standards for removal, the obligation to try to place the child with a Native American foster family if possible, and certainly the beyond a reasonable doubt standard for termination of parental rights.

**[00:14:50.26]** Um, and at the same time, these cases were in state court. And the... I think even with the best of intentions, non Native-American participants— those being judges and lawyers and caseworkers— not fully immersed in, you know, Native American family or cultural values, would almost by default apply their own values. Acknowledging that the Indian-- I don't know quite how to say this... but the people believed they would be applying the higher standard of ICWA without fully understanding what that might mean.

**RG:** Yep.

**MS:** If you know what I mean. It was well intentioned. Well-intentioned but not fully



informed. At the time, I was not... So I was an AG for these years, and there was I know in the department an Indian Child Welfare Specialist, and I think that person was Sandi Hodge, who was sort of the ICWA lady. Sandi is probably a person you will have already interviewed or might interview, or would be part of this study. And Sandi was good about trying to assure that throughout the department the local offices were aware of the requirements of ICWA and adhere to the requirements of ICWA. And again, it's, you know, it's a big department scattered in different pockets around the state, and with a lot of crisis management going on.

So, you know, I guess I can't say how effective I believe that was. To be perfectly honest, I think what motivates not just the Maine Department but other departments to focus on policy requirements like a big, a big requirement like enforcing the Indian Child Welfare Act, doesn't necessarily get focused on until the feds come in and audit. It's that sort of principle of what gets counted, what is a deficit that could result in the loss of federal funding. And something that a big machinery like a public child welfare agency, it's gonna focus on something when people are brought sharply to attention, if you will. And that's usually the federal compliance reviews.

And so, you know, when you and I were trying to set up this call [00:17:58.00] I was trying to remember, cause I could not for the life of me recall, how the state came out the first time the feds came through after the Adoption of the Safe Families Act and did a, you know, sort of a trial run review. How the state came out on ICWA compliance. I certainly know that... so that's I'm sorry that's just a little diversion. I do know that my colleagues, when I was working in the Augusta/ Waterville area, my colleagues up in Bangor and in Fort Kent in particular were dealing with ICWA issues much, much, much more commonly. And I think I'll be interested to learn or read one of these days what their impression was on how well or ill the, you know, compliance was being achieved— because they would have had more of those cases.

Um, one thing I don't want to lose track of when I talk about this is, I'm not frankly sure how often the tribe... when a Native American child came in to... came to the attention of the department, how notification to the tribes occurred for the tribe to be able to step forward and ask to retain jurisdiction. In my experience it was rare that the tribe, at least in my parts of the world, that the, that the tribes asserted their rights to take jurisdiction of the tribe, the case. So my impression was that in many cases the tribes deferred to the state courts to handle these issues. Whether they did that because they didn't know there was one of their kids involved with the department, or if they knew and didn't have a tribal court, or didn't feel for whatever reason it would be best for them to assert jurisdiction. That, I can't answer that question.

But, I do remember asking myself some years later how that, how that came to be. You know, how, how that was. I'd be interested in, you know, the percentage of cases in the northern part of the state where the tribes basically took hold of the issues themselves and resolved matters under their own jurisdictions and in the tribal courts. But the folks I think in the Bangor and

Fort Kent area, Machias area, would know the answers to that question. So.

**RG:** Mmhmm. Are there any other comments you want to add about your time working as an AG? Or an AAG rather?

**MS:** Um, only I think to say that overall I believe the caseworkers, you know, they were absolutely doing the best they could with the caseloads they had and the information they had available to them, and the challenges they were experiencing. And it was a tough time. It was a tough time. At least in terms of, you know, case loads, and you know, that was true of the courts.

You know, oh, I'm glad you ask me that question. With the exception of.... sometimes how cases.... back in those days at least, a kid would come into care and then of course there were judicial reviews that were sched— supposed to be scheduled every six months.

And for the bulk of my career with the exception of the Lewiston district court, particularly under a judge by the name of John Beliveau, how judicial reviews came to be resolved was left pretty much strictly to discussions among the attorneys and agreements among the attorneys. Judge Beliveau kind of turned that process on its head when he insisted... this would have been, oh gosh, I'm going to say... late 1999 to early 2000. Um, he began to insist that he himself conducted every judicial review on every case. Meaning he would, he would certainly allow the attorneys or the parents and the department and the guardian ad litem to work out a resolution if possible, but he, he wanted to hear what that was and he would ask questions. And other parts of the state, really, the practice was for the attorneys to get up, to work out an agreement and offer it to the court and say we will submit an order for your signature. And that was how judicial reviews were handled.

So I think what, I think what that would mean in terms of what might happen to an Indian, a child subject to the Indian Child Welfare Act would be... It would really be a function of how knowledgeable the group of attorneys assigned to that case were, and how aggressively the attorney for the child or the parents were willing to pursue enforcement of the terms of the act. Is that clear?

**RG:** Yea.

**[00:24:29.07]**

**MS:** Yea, yea. So, uh, you know, I think frankly some kids, placement of kids or return home for kids might have been, might have not happened because it wasn't the focus of discussions if you will— on next steps for this child. Or it would have been if you had somebody who was really knowledgeable about it. But, who was willing to sort of push the discussions in that direction.

Again, I think, I think the integrity of the representation that everybody got among the group of attorneys who did this kind of work. And it was a core group of attorneys. You know, it's such difficult work that people choose it, and so the, whether you were a defense attorney or a





prosecuting attorney or guardian ad litem, people took their work pretty seriously. And at the same time there was lots and lots and lots of it to do. And, I think again, people did the best they could. If ICWA was on people's radar, it... it would have been up to somebody to push that forward. So, and I don't know... I can't assess how vigorously that happened. Um...

**RG:** In your time working as an AAG, did you feel that the department was, was pursuing active efforts to prevent the breakup of a Native family?

**MS:** Well, like I said, where I worked, and I had a couple of roles— I had for a few years I had a case-, caseload in Waterville and Augusta. And then I became the sort of senior AAG, and was dealing, which is what brought me more into contact with the lawyers who were doing this work in the northern part of the state. And I think I'd say... I'd say some did and... probably some did and some didn't.

Uh, I think for those caseworkers knowledgeable about and committed to the principles of the Indian Child Welfare Act, they would have tried as best they could to comply with it. And for others, I honestly can't say. I honestly can't say. I think it would be interesting to know from the families who were working with caseworkers whether there were some caseworkers who they believed really got it? And were willing to work with them. And others who just didn't really get it and were frustrating to work with.

**RG:** Yea.

**MS:** Certainly over time there as an increasing awareness of ICWA. So, you know, between 1984 when I began and 1994 and 2004, there was certainly a growing awareness of and a willingness to learn if you will— a willingness to learn about this law.

**RG:** Yea. Could you comment a little bit about foster care placements? And how that... if there were any challenges that you were aware of?

**MS:** Oh there were challenges to foster care placements all across the board, and all across the state, that had an impact on everybody. Um, kids who came into care were placed where there was a bed available for them to be placed. And what that meant was family... you know you could be a mom in Skowhegan and have your child placed in Sanford, which is, you know, a hundred and some, just way far away. And the kids might or might not be placed with their siblings. So you could have one child in Sanford and another child in Madawaska. Because that's where the placement was available.

Not just— so requirements not only requirements of ICWA, but also requirements imposed by state law to try and place a child in a home that shared the religious beliefs of the birth family. Just— I mean it just, I think it just wasn't happening. Because I know, you know, the



department was supposed to have made inquiries about that, and certainly make efforts to try and place kids close to home, you know, in a family, in a Native American family if there was one available, and if it was an ICWA child, to make inquiries about religious preferences, to place a child in a similar setting where the child's spiritual support belief system would be supported. And it just was not, it just was not possible. The child went where the bed was.

And of course it was not unusual for a child to have many, many, many different placements in different foster homes, and they winded their way through the system. [00:30:19.29] You know, it certainly wasn't until the Adoption and Safe Families Act began to say, look, between 18 and 22 months, this child is either goin' home, being adopted or going into long term, you know, where there's a long term alternative permanent plan. But before that time lots of kids grew up in foster care. They would spend years in foster care. I think, I think in my experience the one kid who had the most placements was a child who I met in her teens, fourteen or so, and she'd been in 56 different places.

**RG:** Oh my goodness.

**MS:** Actually considered the department office as her primary family. Cause she... she was a very philosophical, wonderful kid. But she, she moved a lot. So, that was an enormous challenge. An enormous challenge.

**RG:** Can you tell me a little bit about your time working as the director of the Bureau of Child and Family Services?

**MS:** Ok, so I uh, I was at the AG's office until about 1993, and then I went back out into private practice, but I was doing, and I did guardian ad litem work for kids in care. But I was doing more consulting work. But, I came back to the department... well I went to the CASA program for about a year and was working with some of the CASA volunteers. And then went back into the department really as an adminis — as the head of the administrative hearings unit. So I was out of child welfare for about a year, and in 19-- I think '97 or 8, I was asked to step into the director role, which I did for two and a half, three years.

This was a time of enormous challenge to the department because I came in just after the Adoption and Safe Families Act was being implemented. Which, as I said, was a huge sea change for the department. The, the requir- the 18 to 22 month kind of in-and-out requirement was replacing the, an earlier culture that was... it wasn't just the department, it was the department and the courts as well — where kids, I mean the department would work for years and years and years on reunification efforts with families that just, that weren't successful but they would keep trying. The families would keep trying. The courts would keep trying. And meanwhile the child was growing up.

**RG:** Yep.

[00:33:20.18]

**MS:** So, until they, you know, are about to turn 18, and... oftentimes I think caseworkers will

tell you, the first place the kids went upon turning 18 was home. You know, for better or ill, many of them kind of just went back home.

**RG:** Yep.

**MS:** So, but, but, that was the system as it existed at that time. And as.... the refocus on kinship care was, was a big shift. The focus on family preservation over removal was a huge shift. And then the concept that kids shouldn't be growing up in foster care, they need a permanent plan of some kind, within 18 to 22 month within coming in, was huge. So a lot of my focus as the bureau director at the time was really trying to, you know, implement the cultural changes that would, that would be in.... that would move that new philosophy forward. And it was really tough.

And there was another piece of... it was another project that occupied a good deal of my time. It was sort of a companion piece to all those other changes, and that was... was to train, was to bring caseworkers who were what we called "substitute care workers." Maine, the Maine staff was divided into two parts. There was the protective workers who worked with a family at the start of a case, up to the time the child came into foster care. So those would have been the people who would have been charged with doing any family preservation, or, you know, trying to get families into treatment, or, to keep the kids from going into care.

But once a child came into foster care the case transferred to a completely different foster care worker, who would begin to work on the reunification efforts, who would be making sure... who would be placing the child, who would be responding to replacing the child in a new home if the first placement or the second, or the third, or the fourth placement blew up, or the child blew out, or whatever happened.

And what the... the missing piece for the sub-care workers was.... there was a, there was kind of.... there was a belief at work at the time that foster care was always safer than leaving the child at home. And the reality was that things, bad things happened to kids in foster care too. And so getting the foster care staff to begin to be able to do safety assessments for kids in foster care was huge. It was huge. Um, so we, you know... we tried to implement sort of an algorithm. Actually a person who could also talk about this would be Sandi Hodge, because Sandi was very knowledgeable about how we do an analysis of safety. What are the risk factors existing in either a birth home or a foster home that would suggest a child might or might not be safe. And you know, factors to look for, and risk factors at work. And sort of getting foster care workers to understand those concepts and apply them as they visited and monitored foster homes was, was really big.

And so, so for me the challenges were... and you know, I'm sure anybody who knows anything about organizational change... these four initiatives —the emphasis on kinship care and relative

care, the shortening of the time frame for kids to be in care, the emphasis on family preservation and increasing awareness that in foster care kids need to be made more safe—were four huge change initiatives. And in a way, getting the.... and they all had to have, well with the exception of the last one perhaps, the first three were driven by ASFA. So there really wasn't any way of phasing in enough cultural change in the agency to get people thinking in a different way, in a very short period of time.

So, those were my challenges. Those were my personal challenges in keeping with an increased and ongoing awareness of, an increased awareness of ICWA. I do know that at that time, when I was there, there was outreach being done um, through the... actually it was through Muskie. There was a woman by the name of Holly Campbell who was working at Muskie at the time, who was— she's a nurse— who was doing some work with the tribal entities, kind of in collaboration with domestic violence work. And she had... she I know was developing, sort of in the name of the department as well as she worked with Muskie, to... to have a greater collaboration between the state and the tribes.

*[00:39:40.14]* Uh, I remember having some conversations with tribal leadership about improved relations. But I can't say it resulted... other than, other than an acknowledged willingness to talk more, there was... I can't say that I was able to follow those through to any kind of institutionalized process, to keep those discussions going. Which I would mark as a failure on my own part. In, you know, in not being able to follow that particular thread. It was an opportunity. I think it may be an opportunity missed. It could be that my successor and the person after her and the person after her, have been able to move that forward a little bit, at least to the point we're at today. But I would say in my era as director, it was just the beginnings of the conversation.

I'm glad to say they were cordial conversations, but they weren't uh... I'm trying to.... I don't... *(Long pause.)* I'm trying to, I don't, I...It. They weren't completed. It was a conversation that started, and wasn't completed.

**RG:** Mmhmm. How long were you working with the department for?

**MS:** Uh, I would say I was a Bureau Director for like two and a half, three years. As I said, it was the three years right after ASFA. One of the things I did do.... you're probably aware that ASFA required the three-year reviews to be conducted and.... the Child Welfare reviews... and I was able, I considered this a coup in a way. Maine was the last state to volunteer to be a kind of a test or a pilot state for the new federal reviews, because it was, I thought it would give us an idea of where we were without the risk of... it was a no fault. Without risk of financial penalties. Which, you know, once the feds began implementing the full reviews, there was always the risk of loss of Title IV-E dollars, if there were areas where the states were failing. So...

So there was a lot goin' on!

**RG:** Yea, absolutely.



**MS:** Yep.

**RG:** Um, so if my math is correct, you were the director during the time this 1999 instance with the Maliseet tribal community, is that correct?

**MS:** Uhh.... talk to me about that.

**RG:** Um, where the department had come in to remove two girls from their home and Brenda Commander, the chief at the time, and current chief, stepped in and said that, you know, the department wasn't going to be removing any more kids from their community. Does that sound familiar?

**MS:** I would have remembered that.

**RG:** Oh.

**MS:** So, it must have happened right after I left.

**RG:** Oh, ok.

**MS:** I certainly would have remembered that.

**RG:** *[00:43:48.20]* Can you tell me about some of the other, if there were any of the other things that kind of stood out to you in terms of um, ICWA compliance during your time as director? Areas where you see there could have been improvement, or where the department might have been at a shortfall? Or strengths where the department was?

**MS:** Well I guess I would go beyond the department in this particular case, and I'd say that sort of the larger system...

**RG:** Mmhmm.

**MS:** I think the department and the court system probably could have done a better job coordinating with the, with the tribal courts, um, than perhaps they did at the time. Um, I do uh, I... so I think that would be, that would have been an area that... and maybe, who knows? There may have been activities going on at the local level of which I was not aware. But I, but I think the relationship between the two, the court systems would have been an opportunity to explore for mutual education and improvement that I'm not sure was. Like I said, I don't know the reasons for that. I don't know if the department was you know... I don't know if the problem was notice. I don't know... meaning that the tribes didn't know when things were happening and should have. Or if for whatever reason the tribes elected to defer to state court. But I don't

know how much cross-pollination or cross education was happening at the time. I think that would have been an opportunity for improvement.

**RG:** Mmhmm. How did, in your opinion, how did the implementation of the Adoption and Safe Families Act impact the Indian Child Welfare Act and the state complying with the Indian Child Welfare Act?

**MS:** I'm not sure I understand the question, Rachel.

**RG:** So, um, I guess I'm kind of asking if the implementation of the Adoption and Safe Families Act had an impact on the way caseworkers thought about the Indian Child Welfare Act.

**MS:** Yes, yes, I do.

**RG:** Can you tell me a little bit about that again?

**MS:** Well I think it just raised... you know it was a law. And it was uh, a notable law. And I think it, just by virtue of the fact that it was a federal law, it would have necessity, have raised everybody's awareness that this, that there was a population that was in need of a different kind of protection and preservation. I don't know if that would have occurred without the adoption of ICWA. Is that what you mean?

**RG:** Um, no. Let me try to rephrase the question. So previously you had mentioned that before the Adoption and Safe Families Act, which kind of shifted, my understanding is that it shifted thinking about family preservation? So I'm wondering if it that shift kind of also affected the way the Indian Child Welfare Act was implemented.

**MS:** Oh yes, I'm sorry I was mishearing you. Yes, I do. I do. I do. I think it raised awareness. I think it raised awareness generally about family preservation and replacement of children with their birth families for everybody. But I think it particularly raised awareness around Native American kids.

**RG:** Mmhmm. Are there any (*Microphone noise*), pardon me. Are there any areas where you see the Adoption and Safe Families Act and the Indian Child Welfare Act not working together? (*Long pause.*) So any areas where...

**MS:** Uh, no I don't. I don't. I think they are complimentary laws that reinforced each others' basic philosophy. And I don't... I suppose if there were any potential conflict it might be that ICWA would compel a swifter reunification than the 18 to 22 months that ASFA allows a state to come to a resting place about a permanent place for a child. In other words, from the ICWA standpoint, ASFA may not be vigorous enough. And my... you know... yea.

**RG:** In your time working as director, were there any instances that you can recall, or that were brought to your attention, where the tribes and the department were kind of butting heads about the termination of parental rights?



**MS:** Um, I'm sure there would have been. There probably would have been cases in the Bangor, in the northern part of the state, just regular termination of parental rights cases, of, which almost by definition people are going to be bangin' heads on it. [00:49:43.14] I don't think there would ever have been a question about what the standard of proof would be. I mean it would have been quite clear that uh, "beyond a reasonable doubt" would be the standard to be applied um in, in one of those cases. So the department would have been put to a pretty high level of proof.

**RG:** The reason why I ask is because a number of the tribes here have indicated that they, they don't believe in terminating parental rights, and so they... a number of the tribes here are not longer terminating parental rights. So they would move to something like a permanency guardianship, but it wouldn't be adoption. Does that make sense?

**MS:** Yea, that was not a subject of conversation back in my day, as... if I can put it that way.

**RG:** Oh, ok. Yea, that's good to know. Um, what did you see as some of the major strengths of the department and of the courts in ensuring ICWA compliance?

**MS:** Well I think over time one thing that improved terrifically from where, you know, we started this conversation is people began to ask the questions more, more deeply. You know, and sort of tried to really, really track down whether or not ICWA might apply in a case. And that would mean being more vigorous about making inquiries about paternity, um, you know... and it's simple stuff, like if a young mother says "gee, I'm not really sure who the father is." You don't stop asking there, you ask well, back when you would have conceived this child who were the men with whom you associated who could have been?

**RG:** Mmhmm.

**MS:** The father? And then, and then begin to do the inquiry... to follow that road to see if we had somebody who was, you know, who was a tribal member, who could, who could be a person resulting in a child to whom ICWA applied. So, I mean, it just... the awareness and an increased willingness to learn. You know, I will say... one of the things I believe about the Department of Human Services in Maine.... and I suppose this is true elsewhere, is people are not unwilling to acknowledge where they failed in the past and where, just by ignorance or you know... overwhelmingness or whatever, and to try and do better. I think once people kind of caught on to this concept they under... people understand it. And I think they're able to at least try to put themselves in the shoes of a Native American family, recognizing the difficult, difficult history, and to try and make it right. To try and make it right. And I really think that the department... I think ICWA helped in that, and I, like I said, I think people genuinely embraced it. Did they succeed all the time? I don't think so. But sometimes? Yes they did.

So, hey I have a question... this is not exactly off the record. You mentioned this tribe, the 1999 case involving the Maliseets and the two girls. Uh, Penthea sent me a link to an NPR program about the Truth and Reconciliation Project, which I wasn't able to open. Was that piece discussed in that, do you know?

**RG:** Oh no. It wasn't. It wasn't. But I will try to find the link for you and send it again.

**MS:** Ok. Ok.

*[00:54:11.21]*

**RG:** So my, my understanding of that case is-- there's kind of mixed, mixed accounts I would say. There's on the one side the understanding that there were two girls that were in... that needed... that should have been removed. Or needed to be removed. They needed protection. And the state came in, um, with a court order saying that they were going to remove these two girls. And Brenda Commander came in and said you're not going to be removing any more kids from our care, or from our reservation anymore. On one account, that court order was signed, and in another account it was not. Um, and so that's the reason why I asked. It seems like it's an account that comes up quite a bit about the state's role, especially in Aroostook County.

**MS:** So would this have happened in Houlton? Was this a Houlton Band of Maliseets?

**RG:** Yes.

**MS:** Ok. Its possible that this.... I guess I'm trying to remember the dates when I was there. It wouldn't be outside the realm of possibility Rachel that this would have happened in Houlton and I wouldn't necessarily have known about it.

**RG:** Ok. That makes sense.

**MS:** You know? Yea. If it were resolved locally, one way or the other, um, and it would clearly have involved a petition to the, you know, to the district court in Houlton... it may not have, you know, it might not have trickled down to me. Because I would have remembered. I'm pretty sure I would have remembered a statement, or a declaration that, you know, you will take our children no more, is something I would recall. Yea.

**RG:** Yea, exactly. Um, so I have another question, I just want to go back for a minute to the Adoption and Safe Families Act. Um, I guess I'm wondering in your opinion, why this mentality of family preservation, or the mentality to focus more on family preservation, why that didn't shift until the Adoption and Safe Families Act. What's your kind of sense of that? Why did it take so long despite this kind of, this law being passed in 1978, which although it only applied to Native people, that, it did focus on working to preserve family ties. So I guess within...

**MS:** We're talking about ICWA in 1978? And ASFA, in?





**RG:** Yea, so why.... there's that kind of gap between 1978 and 19, it passed in 1997 or '98?

**MS:** Uh, '97.

**RG:** Ok, so.

**MS:** It was a Clinton Administration law, I'm pretty sure. So I'm going to say 1997.

**RG:** Ok, so why there was that gap in between those years from '78 to '97 where the mentality was still more focused on child safety and removing the child from the home and not on family preservation. So I guess I'm asking why, in your opinion, why there needed to be an additional law that applied to everyone to kind of shift that mentality towards family preservation?

**MS:** Um, well... that's a compli-, that's a complex question. You know... I think some... there are some what I would consider very, very cynical people who would, who might say to you that under the old Adoption Assistance Act, you know the pre-cursor to ASFA, that the way states were funded under Title IV, under the Adoption, oh I wish I could remember it... the adoption... the original 1982, '80 - '82 Child Welfare Act.

**RG:** Yep.

**MS:** Um, anyway, there are some cynics who would say that the way the federal government structured the disbursement of funds to the states under that law uh, resulted in more dollars going to the states when kids came into care because less dollars were earmarked for pre-removal activities. It was... It's a distinction between what states could get under Title IV-B, the sort of family preservation, and Title IV-E, which funded the foster care system. So there are people who say there was an incentive in the state to take kids out of their homes and keep them in foster care as long as possible because that kept the federal dollars flowing.

**RG:** I see. Yep.

**MS:** I do not believe that is at all accurate. I mean I don't agree with that, with that theory. But I do think that the moneys that the feds allocated for up-front family preservation, which was not nearly as much as was available in foster care, really in a way precluded the state from being able to deploy their limited human resources and dollar resources for activities that were unfunded.

**RG:** Ok.

**MS:** Or funded in a limited way. Um, I don't... but I mean really. I don't buy.... I don't think

any state anywhere would say yea, we want your kids in care cause we really love these federal dollars. Frankly, most caseworkers I knew who were good caseworkers, and that was a lot of them, would, would, were very frustrated because... I mean what they would say.... I have a friend that used to say this... she said what people don't understand, if I'm talking to a family, what I want to say to people is "what you don't understand is I don't want your kids. I want you to have your kids."

**RG:** Yea.

**MS:** Um, so, but you know, I mean, the way Title IV was drafted, it allowed, there was a strong emphasis on safety and removing kids from risky situations. There was a natural aversion in the state to knowingly leave a child in a home where there were risks and then having the child, something really bad happen to the child, like the child is seriously injured or dies. Um, so the department wouldn't want to be in a situation where they knew and did nothing.

**RG:** Yea.

**[01:01:52.24]**

**MS:** And so it was safety first and safety was considered uh, you know, take the child out and there were... and then the moneys began to be applied to family reunification. But working with the family beforehand.... the resources just weren't there for that. So it was kind of a structural, federally driven structural structure, combined with what I was talked about before, which is safety first, and a sort of a skepticism if you will, that... Because the standard of removal is actually pretty high. I mean, immediate risk of serious harm is a pretty high standard. And I know that I was sort of shocked when I first started doing cases how much, how many, many of the cases involved serious physical abuse and sexual abuse. And so those dynamics are really, I think are really hard for caseworkers to work with, in terms of how to get your mind around, how to fix a family in which those dynamics exist.

So you know, the family preservation.... It just uh.... So I... kind of a skepticism if you will that the dynamics of such a family are fixable. So I think that was at work. There is the old "apple doesn't fall far from the tree" theory. Sort of an old fashioned. And there was a lot of intergenerational abuse, at least there was an awareness of it at the time. So all of these factors at least coalesced between 1978, 1982 and 1997, you know to push the department more into the direction of, first things first, lets get the kids safe then we'll fix the family later. And we will have the time to do it.

**RG:** Mmhmm.

**MS:** And that all changed when the feds said, well you're going to have time to do it, but it's going to be a heck of a lot shorter time. So. I don't know if that answers your question.

**RG:** Yea, it does absolutely.



**MS:** You know, I do... there is another thing I just wanted to talk about... I don't know. It's another phenomenon at work here, and it has to do with the... in Maine and in a lot other states one of the, one of the challenges about family preservation had to do with situations where there was domestic violence in a family. There was a huge... which generally was combined with alcoholism and other stresses on a family. But in cases where there was domestic violence occurring, children were removed from the custody of their mothers, because the mothers for whatever reason were not able to protect themselves or their children from violent partners, or...

And I'll just generically talk about it being the mother as the general victim. I am aware that sometimes the male was the subject of domestic violence. But it was a huge split between the child welfare community and the domestic violence advocacy community, because the DV advocates DHHS was penalizing mothers in particular by taking away their children due to circumstances that they really, given the dynamics of violence, they couldn't really control.

**RG:** Yea.

**[01:06:02.27]**

**MS:** And um. You know, to the extent that those dynamics obtained in Native American families, I think the department folks don't have the same belief. That, you know, you've got to get the kids away from being exposed to domestic violence, no matter where that's happening. And so there would be less of a consciousness of ICWA if you will? If the family were a Native American family, I don't know if it would matter. You know what I'm saying?

The protection piece, from the... and this, this awareness happened at a time when there was scientific research going on, it was very, very, very big in the '90s.... It was work on the effects on infant brain development as a result of exposure to domestic violence. And it came out of Baylor University, and lots and lots and lots of... that children between the age of one and three and even in utero, who were exposed to violence would have significant delays in their, in the development from the brain stem right up to the development of the cerebral cortex.

**RG:** Oh, wow.

**MS:** And that research really informed. And it was... in Maine at least, and this was partly due to the work of Sandi Hodge, to bring awareness of this, the impact of violence on kid's development. It was very alive, and the department staff were very, very interested in learning about this. And so I don't know if. And I, the research is valid. There is sound scientific research having to do with infant brain development, that I, that because it was so... people in the department in the '90s were so aware of it, and so interested in it.... I don't know if that, I don't know if that diverted attention away from better family preservation up front or not. But

it was a factor to be considered.

It's very interesting research by the way.

**RG:** Yea, it sounds very interesting.

**MS:** Bruce, I'm trying... the main researcher was a guy named Dr. Bruce. His name will come to me, but he's famous, and he started at Baylor University, infant brain development work.

**RG:** Oh, wow.

**MS:** So again, its one of those, everybody has the best of intentions, and to some extent, protective agenda if you will... or philosophy is the better, perhaps the better word. And it sometimes takes precedent over other considerations. You know? And we just weren't doing the cross cultural... In those days, cultural diversity education, cultural awareness wasn't nearly as emphasized as it has mercifully become.

**RG:** Yea. Are there other um areas where you saw weakness in the state's compliance, either within the department or within the courts in state compliance with the Indian Child Welfare Act?

[01:09:38.20]

**MS:** I think nothing more than what I've said already, I think.

**RG:** Yea. Are there any other comments that you want to add? Anything else that you think is important for the commission to know?

**MS:** Nothing really other than to reinforce what I said earlier, Rachel, which is that you know, despite the gaps and the deficits, I genuinely do believe everybody was working with the best set of tools that they had at the time. I think looking back on it, just about everyone would say boy, we dropped the ball there. Speaking for myself personally. I can reflect on the conversations I had with the tribal leadership that was a beginning of an open door, and then, and you know what happened to me is what happens to all of us— we kind of get carried away by events. And uh, I see that as a personal failing.

And at the same time, a personal plus to, you know, to begin to make sure that ICWA principles were more uh, significantly included in caseworker training, that we were asking the questions more frequently, that we were trying to track down absent fathers or other fathers, and just trying, generally trying to do a better job with it. But... but... Or as a friend of mine, a caseworker friend, who was an old long, long time caseworker, she was great. And she would go about her work and she'd reflect on one case or another, and as often as that, she'd say well, we tried! And failed! (*Laughs.*) But, anyway... So that's my two cents. I hope it's been helpful.

**RG:** Yea, absolutely. Well I want to thank you so much for your time um, this afternoon and for sharing with me. I'm really appreciative for you sitting down and for all of your insight.



**MS:** Well, you're most welcome, Rachel. It's just, you know, the best I got.

**RG:** Well, thank you. If there's nothing else you want to add, I'll stop the recording. Just, to let you know.

**MS:** Ok.

**[END OF RECORDING]**